

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

UNITED STATES OF AMERICA . CRIMINAL ACTION NOS.  
 . 4:17-CR-029-O-1  
 . 4:17-CR-007-O-1  
V. .  
 .  
KRISTOPHER RAY FACIO . Fort Worth, Texas  
ABIOLA RAYMOND OLAFUSI . April 19, 2017  
 . . . . .

TRANSCRIPT OF PROCEEDINGS  
(Rearrangement Hearing)  
BEFORE THE HONORABLE JEFFREY L. CURETON  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: MS. AISHA SALEEM  
MR. JOHN P. BRADFORD  
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For Defendant Facio: MR. MICHAEL A. LEHMANN  
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For Defendant Olafusi: MR. JEFFERY C. KING  
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Court Reporter: MS. ANA P. WARREN  
U.S. District Court Reporter  
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Proceedings recorded by mechanical stenography; transcript  
produced by computer-aided transcription.

**P R O C E E D I N G S**

(Commencing, 9:45 a.m.)

THE COURT: All right. The Court has two cases that are set for either rearraignment or guilty plea at arraignment. As I call your name, if you will please come forward and stand before the bench, you will be joined by your counsel.

Cause Number 4:17-CR-29, United States versus Kristopher Facio.

Thank you, sir, if you will step on forward.

Ms. Aisha Saleem is present for the government and Mr. Michael Lehmann for the defense.

Also, Cause Number 4:17-CR-7, United States versus Abiola Olafusi. Mr. John Bradford for the government and Mr. Jeff King for the defense.

For this proceeding, I need to have each of you placed under oath. Would you please raise your right hand and be sworn by my clerk?

(Defendants sworn by the clerk)

THE COURT: I'll have the record reflect that each answered in the affirmative.

I'm going to ask each of you to speak up loud and clear so that I can hear you and the court reporter can as well. It's a big courtroom. So I need your voice to project.

Would you state your full name for the record beginning

1 with Mr. Facio?

2 DEFENDANT FACIO: Kristopher Ray Facio.

3 THE COURT: Thank you.

4 And Mr. Olafusi?

5 DEFENDANT OLAFUSI: Abiola Raymond Olafusi.

6 THE COURT: And is your name spelled correctly in the  
7 superseding information filed against you, Mr. Facio?

8 DEFENDANT FACIO: Yes, Your Honor.

9 THE COURT: And is your name spelled correctly in the  
10 indictment that has been returned against you, Mr. Olafusi?

11 DEFENDANT OLAFUSI: Yes, Your Honor.

12 THE COURT: Do each of you understand that you are  
13 now under oath and if you answer any of the Court's questions  
14 falsely, your answers could later be used against you in a  
15 prosecution for perjury or for making a false statement?

16 Do you understand, Mr. Facio?

17 DEFENDANT FACIO: Yes, sir.

18 THE COURT: Mr. Olafusi?

19 DEFENDANT OLAFUSI: Yes, Your Honor.

20 THE COURT: Do each of you read, write and understand  
21 the English language?

22 Mr. Facio?

23 DEFENDANT FACIO: Yes, Your Honor.

24 THE COURT: Mr. Olafusi?

25 DEFENDANT OLAFUSI: Yes, Your Honor.

1           THE COURT: Do you further understand that I am  
2 conducting this hearing rather than the district judge in your  
3 case? However, it's the district judge who retains all final  
4 decision-making authority over your plea, and it's the  
5 district judge who will conduct any sentencing in your case,  
6 and I'm conducting this hearing based on your consent?

7           Do you understand, Mr. Facio?

8           DEFENDANT FACIO: Yes, Your Honor.

9           THE COURT: Mr. Olafusi?

10          DEFENDANT OLAFUSI: Yes, Your Honor.

11          THE COURT: There has been presented to me this  
12 morning a couple of documents entitled "Consent to  
13 Administration of Guilty Plea and Allocution" by a United  
14 States Magistrate Judge, and these consents appear to be  
15 signed by each of the defendants and his counsel.

16          Is it your signature that appears on the consent form,  
17 Mr. Facio?

18          DEFENDANT FACIO: Yes, Your Honor.

19          THE COURT: And on yours, Mr. Olafusi?

20          DEFENDANT OLAFUSI: Yes, Your Honor.

21          THE COURT: Very well. Then I find that each of the  
22 defendants has knowingly and voluntarily waived his right to  
23 enter a guilty plea before the district judge and has  
24 consented to proceed before me in that plea today.

25          Let me give you some general instructions.

1           You may, if you choose, plead not guilty to any offense  
2 charged against you or persist in that plea if it's already  
3 been made, and if you plead not guilty, the Constitution of  
4 the United States guarantees you the following rights:

5           You have the right to a speedy and public jury trial in  
6 this district. You have the right at such a trial for you to  
7 confront, that is, to see, hear, and cross examine all  
8 witnesses against you. You have the right to use the power  
9 and process of the courts to compel the production of any  
10 evidence, including the attendance of any witnesses on your  
11 behalf.

12           You have the right to have the assistance of an attorney  
13 at all stages of the proceedings, and if you could not afford  
14 an attorney, I would appoint an attorney for you at trial. At  
15 such a trial, you can not be compelled to testify, and whether  
16 you would testify would be a matter in which your judgment  
17 alone would control. At such a trial, the United States would  
18 be required to prove your guilt beyond a reasonable doubt, and  
19 if you were found guilty, you would have the right to appeal  
20 that conviction.

21           Do each of you understand that you have and are guaranteed  
22 each of those constitutional rights?

23           Mr. Facio?

24           DEFENDANT FACIO: Yes, Your Honor.

25           THE COURT: Mr. Olafusi?

1           DEFENDANT OLAFUSI: Yes, Your Honor.

2           THE COURT: On the other hand, if you plead guilty  
3 and if that guilty plea is accepted by the Court, there will  
4 not be a further trial of any kind, so that by pleading guilty  
5 you waive your right to a trial as well as those rights  
6 associated with a trial as I've just explained them.

7           Do you understand, Mr. Facio?

8           DEFENDANT FACIO: Yes, Your Honor.

9           THE COURT: Mr. Olafusi?

10          DEFENDANT OLAFUSI: Yes, Your Honor.

11          THE COURT: Generally, a defendant who is accused of  
12 a crime cannot plead guilty unless he is actually guilty of  
13 that crime. In federal court, the judge determines the  
14 penalty when a defendant is convicted whether that conviction  
15 is on the basis of a jury verdict or upon a plea of guilty.

16          The Court has not and will not talk to anyone about the  
17 facts of your case except here in your presence where you and  
18 your attorney and representatives of the government are all  
19 present. However, if a guilty verdict is entered, a  
20 presentence report will be prepared, and the Court will review  
21 that report with probation officers outside of your  
22 presence.

23          If you plead guilty, you will be convicted. However, you  
24 and your attorney each will be given an opportunity to present  
25 to the Court any pleas for leniency. The penalty will be

1 decided based upon the facts heard in court.

2 You should never depend or rely upon any promise or  
3 statement by anyone whether connected with law enforcement or  
4 the government or anyone else as to what penalty will be  
5 assessed against you.

6 Should you decide to plead guilty, your plea of guilty  
7 must not be induced or prompted by any promises, pressure,  
8 threats, force, or coercion of any kind. A plea of guilty  
9 must be purely voluntary, and you should plead guilty only  
10 because you are guilty and for no other reason.

11 Do each of you understand each of my explanations about  
12 the process and consequences of pleading guilty?

13 Mr. Facio?

14 DEFENDANT FACIO: Yes, Your Honor.

15 THE COURT: Mr. Olafusi?

16 DEFENDANT OLAFUSI: Yes, Your Honor.

17 THE COURT: Under the Sentencing Reform Act of 1984  
18 as it's been construed by our Supreme Court, the United States  
19 Sentencing Commission has issued advisory guidelines for  
20 judges to consider in determining the sentence in a criminal  
21 case.

22 Have each of you discussed with your attorney the charges  
23 against you, the matter of sentencing and how those sentencing  
24 guidelines might apply in your case?

25 Have you done so, Mr. Facio?

1           DEFENDANT FACIO: Yes, Your Honor.

2           THE COURT: Mr. Olafusi?

3           DEFENDANT OLAFUSI: Yes, Your Honor.

4           THE COURT: Even so, I must inform you that in  
5 determining the sentence, it is the Court's obligation to  
6 calculate the applicable sentencing guideline range and to  
7 consider that range, along with any possible departures under  
8 the guidelines, and other sentencing factors under 18, USC,  
9 Section 3553(a).

10           The Court is not bound by facts that are stipulated  
11 between you and your attorney on the one hand and the  
12 government on the other. The Court can impose punishment that  
13 might disregard stipulated facts or take into account facts  
14 that are not mentioned in the stipulations, and in that event,  
15 you might not even be permitted to withdraw your plea of  
16 guilty.

17           The Court will not be able to determine the proper  
18 guideline range for your case until after that presentence  
19 report has been completed and both you and the government have  
20 had an opportunity to challenge the facts and the conclusions  
21 set forth in that report.

22           After the Court has determined the guideline range  
23 appropriate under the facts of your case, the Court has the  
24 authority to impose a sentence that is above, below, or within  
25 that guideline range, as long as the sentence imposed is



1 reasonable and it's based upon the facts and the law.

2 You have the right to appeal the sentence the Court  
3 imposes unless you waive that right, and under some  
4 circumstances, the government also has the right to appeal.

5 Finally, I inform you that within the federal system  
6 parole has been abolished, so that if you are sentenced to  
7 imprisonment, you will not be released on parole.

8 Do each of you understand all of my explanations about the  
9 sentencing process?

10 Mr. Facio?

11 DEFENDANT FACIO: Yes, Your Honor.

12 THE COURT: Mr. Olafusi?

13 DEFENDANT OLAFUSI: Yes, Your Honor.

14 THE COURT: How old are you, Mr. Facio?

15 DEFENDANT FACIO: Twenty-six.

16 THE COURT: Mr. Olafusi?

17 DEFENDANT OLAFUSI: Twenty-six.

18 THE COURT: And can I have each of you state your  
19 date of birth for the record?

20 Mr. Facio?

21 DEFENDANT FACIO: November 1, 1990.

22 THE COURT: Mr. Olafusi?

23 DEFENDANT OLAFUSI: August 4, 1990.

24 THE COURT: How far did each of you go in school?

25 Mr. Facio?

1 DEFENDANT FACIO: High school graduate.

2 THE COURT: Mr. Olafusi?

3 DEFENDANT OLAFUSI: High school graduate and  
4 community college.

5 THE COURT: Are you currently or have you recently  
6 been under the care of a physician or a psychiatrist?

7 Mr. Facio?

8 DEFENDANT FACIO: No, Your Honor.

9 THE COURT: Mr. Olafusi?

10 DEFENDANT OLAFUSI: No, Your Honor.

11 THE COURT: Have either of you been recently  
12 hospitalized or treated for narcotics addiction or alcoholism?

13 Mr. Facio?

14 DEFENDANT FACIO: No, Your Honor.

15 THE COURT: Mr. Olafusi?

16 DEFENDANT OLAFUSI: No, Your Honor.

17 THE COURT: Are you now under the influence of  
18 alcohol or any narcotic drug?

19 Mr. Facio?

20 DEFENDANT FACIO: No, Your Honor.

21 THE COURT: Mr. Olafusi?

22 DEFENDANT OLAFUSI: No, Your Honor.

23 THE COURT: Do either of you suffer from any  
24 emotional or mental disability?

25 Mr. Facio?

1 DEFENDANT FACIO: No, Your Honor.

2 THE COURT: Mr. Olafusi?

3 DEFENDANT OLAFUSI: No, Your Honor.

4 THE COURT: Are you of sound mind, and do you fully  
5 understand what it is we're doing here today?

6 Mr. Facio?

7 DEFENDANT FACIO: Yes, Your Honor.

8 THE COURT: Mr. Olafusi?

9 DEFENDANT OLAFUSI: Yes, Your Honor.

10 THE COURT: To defense counsel, do you have any  
11 reason to believe your client is not fully competent to enter  
12 a plea of guilty?

13 Mr. Lehmann?

14 MR. LEHMANN: No, Your Honor.

15 THE COURT: Mr. King?

16 MR. KING: No, Your Honor.

17 THE COURT: And do each of you believe that the  
18 guilty plea your client proposes to make will be a knowing and  
19 voluntary plea?

20 Mr. Lehmann?

21 MR. LEHMANN: Yes, Your Honor.

22 THE COURT: Mr. King?

23 MR. KING: Yes, Your Honor.

24 THE COURT: Mr. Olafusi, you are pleading pursuant to  
25 a superseding information. I need to go over that process

1 with you.

2 First of all, you are charged with a felony offense, and  
3 under our United States Constitution, you may not be charged  
4 with a felony offense unless a grand jury finds by the return  
5 of an indictment that such felony offense occurred and that  
6 you committed the offense. However, you may waive your right  
7 to indictment by the grand jury and consent to proceed by the  
8 filing of an information by the United States Attorney.

9 The felony charges against you have been brought by the  
10 filing of just such an information by the United States  
11 Attorney's Office. If you do not waive indictment by the  
12 grand jury and the government wishes to pursue this charge  
13 against you, then it must present its case to the grand jury  
14 and request the return of an indictment.

15 A grand jury is composed of at least 16 but not more than  
16 23 persons, and at least 12 grand jurors must find that there  
17 is probable cause to believe that you committed the offense  
18 with which you are charged before you will be indicted. So a  
19 grand jury might or it might not indict you on this charge.  
20 But if you waive indictment by the grand jury, the case will  
21 proceed against you based on the superseding information filed  
22 by the United States Attorney's Office just as though you had  
23 been indicted.

24 So, Mr. Facio, let me ask you. Have you discussed with  
25 your attorney the matter of waiving your right to indictment

1 by the grand jury, and do you fully understand that right?

2 DEFENDANT FACIO: Yes, Your Honor.

3 THE COURT: Have any threats or promises been made in  
4 an effort to induce you to waive indictment by the grand jury?

5 DEFENDANT FACIO: No, Your Honor.

6 THE COURT: Is it your wish to waive your right to  
7 indictment by the grand jury?

8 DEFENDANT FACIO: Yes, Your Honor.

9 THE COURT: Mr. Lehmann, so you see any reason why  
10 your client should not waive indictment?

11 MR. LEHMANN: I do not, Your Honor.

12 THE COURT: And is such waiver consistent your  
13 advice?

14 MR. LEHMANN: It is, Your Honor.

15 THE COURT: There is a document Number 20 filed in  
16 the papers of Mr. Facio's case, which is entitled "Waiver of  
17 Indictment" that appears to be signed by you.

18 Mr. Facio, is it your signature on the waiver form?

19 DEFENDANT FACIO: Yes, Your Honor.

20 THE COURT: Then I find that you have knowingly and  
21 voluntarily waived your right to indictment by the grand jury  
22 and consented to being charged by way of information.

23 Have you received a copy of that charge against you,  
24 Mr. Facio?

25 DEFENDANT FACIO: Yes, Your Honor.

1 THE COURT: Mr. Olafusi, have you received a copy of  
2 your indictment?

3 DEFENDANT OLAFUSI: Yes, Your Honor.

4 THE COURT: Have each of you reviewed the charges  
5 against you, and do you fully understand the nature of those  
6 charges?

7 Mr. Facio?

8 DEFENDANT FACIO: Yes, Your Honor.

9 THE COURT: Mr. Olafusi?

10 DEFENDANT OLAFUSI: Yes, Your Honor.

11 THE COURT: It would be appropriate for the United  
12 States Attorney in each of your cases to now read those  
13 charges here in open court. However, because you understand  
14 the nature of the charges, I will allow you to waive the  
15 reading of them at this time.

16 Do you wish to waive that reading, Mr. Facio?

17 DEFENDANT FACIO: Yes, Your Honor.

18 THE COURT: Mr. Olafusi?

19 DEFENDANT OLAFUSI: Yes, Your Honor.

20 THE COURT: You also have the right to have explained  
21 to you the essential elements of the offense with which you  
22 are charged. So I will call upon the United States Attorney  
23 in each case to set forth those essential elements. This is  
24 what the government would be required to prove at your trial.  
25 So I'm going to ask you to listen carefully.

1 As to Mr. Facio?

2 MS. SALEEM: Your Honor, as to Mr. Facio, in order to  
3 establish the offense alleged in Count 1 of the superseding  
4 information, the government must prove the following elements:

5 First, that the defendant knowingly attempted to persuade,  
6 induce, or entice an individual to engage in sexual activity  
7 as charged.

8 Second, that the defendant used the internet or any  
9 facility or means of interstate commerce to do so.

10 Third, that the defendant believed that such individual  
11 was less than 18 years of age.

12 And, fourth, that had a sexual activity occurred, the  
13 defendant could have been charged with a criminal offense  
14 under Texas state law, that is, a violation of Texas Penal  
15 Code Section 43.25(b), sexual performance of a child.

16 THE COURT: Mr. Facio, do you understand and admit  
17 that you committed all of the essential elements of that  
18 offense?

19 DEFENDANT FACIO: Yes, Your Honor.

20 THE COURT: As to Mr. Olafusi?

21 MR. BRADFORD: May it please the Court.

22 As to Mr. Olafusi, elements of the offense, in order to  
23 establish the offense in Count 1 of the indictment, the  
24 government must prove beyond a reasonable doubt that on the  
25 date and location alleged, one, the defendant knowingly

1 possessed a firearm described in Count 1 of the indictment.

2 Two, that before the defendant possessed the described  
3 firearm, the defendant had been convicted in a court of a  
4 crime punishable by imprisonment for a term in excess of one  
5 year, that is, a felony offense.

6 And, three, that the defendant's possession of described  
7 firearm was in and affecting interstate commerce. That is,  
8 before the defendant possessed the described firearm, it had  
9 traveled at some time from one state to another.

10 THE COURT: Mr. Olafusi, do you understand and admit  
11 that you committed all of the essential elements of that  
12 offense?

13 DEFENDANT OLAFUSI: Yes, Your Honor.

14 THE COURT: Each of you are appearing here today with  
15 counsel, and you have indicated to me that you have discussed  
16 your case and the charges made against you as well as the  
17 issue of punishment with your attorney, also, how the  
18 sentencing guidelines might apply in your case.

19 Are each of you fully satisfied with the representation  
20 and advice that you have received from your attorney in your  
21 case?

22 Mr. Facio?

23 DEFENDANT FACIO: Yes, Your Honor.

24 THE COURT: Mr. Olafusi?

25 DEFENDANT OLAFUSI: Yes, Your Honor.



1 THE COURT: Now, there is a plea agreement before the  
2 Court as to Mr. Facio. So I need to ask you a few questions  
3 about the documents related to that.

4 I have before me a document entitled "Plea Agreement with  
5 Waiver of Appeal" as well as a plea agreement supplement.  
6 They are appropriately styled and numbered for your case,  
7 Mr. Facio. They are filed as Documents 22 and 23 in your  
8 case, and they appear to be signed by you and your counsel and  
9 representatives of the government.

10 First, is it your signature that appears on the plea  
11 agreement and the supplement?

12 DEFENDANT FACIO: Yes, Your Honor.

13 THE COURT: And did you read or have read to you  
14 these documents, and do you fully understand the plea  
15 agreement and the supplement?

16 DEFENDANT FACIO: Yes, Your Honor.

17 THE COURT: By placing your signature upon these  
18 documents, are you asking the Court to accept and approve your  
19 plea agreement with the government?

20 DEFENDANT FACIO: Yes, Your Honor.

21 THE COURT: It has a waiver of appeal paragraph set  
22 forth in your plea agreement, Mr. Facio. It is Paragraph 10  
23 on Page 4. I direct your attention to that part of your plea  
24 agreement and ask you, did you specifically read and discuss  
25 with your attorney this waiver of appeal paragraph?

1           DEFENDANT FACIO: Yes, Your Honor.

2           THE COURT: Do you fully understand it?

3           DEFENDANT FACIO: Yes, Your Honor.

4           THE COURT: Do you knowingly and voluntarily waive  
5 your right to appeal as set forth in that paragraph of your  
6 plea agreement?

7           DEFENDANT FACIO: Yes, Your Honor.

8           THE COURT: Mr. Facio, are all of the terms of your  
9 agreement with the government set forth in this plea agreement  
10 and supplement?

11          DEFENDANT FACIO: Yes, Your Honor.

12          THE COURT: Did you voluntarily and of your own free  
13 will enter into this plea agreement with the government?

14          DEFENDANT FACIO: Yes, Your Honor.

15          THE COURT: Other than the written plea agreement and  
16 the supplement, has anyone made any promises or assurance to  
17 you of any kind in an effort to induce you to enter a plea of  
18 guilty in your case?

19          DEFENDANT FACIO: No, Your Honor.

20          THE COURT: Very well. As I noted, the plea  
21 documents are on file, and I'm satisfied with the answers  
22 given.

23          Let me ask you, Mr. Olafusi. Has anyone made any promise  
24 or assurance to you of any kind in an effort to induce you to  
25 enter a plea of guilty in your case?

1 DEFENDANT OLAFUSI: No, Your Honor.

2 THE COURT: To both defendants, has anyone mentally,  
3 physically, or in any other way, attempted to force you to  
4 enter a plea of guilty in your case?

5 Mr. Facio?

6 DEFENDANT FACIO: No, Your Honor.

7 THE COURT: Mr. Olafusi?

8 DEFENDANT OLAFUSI: No, Your Honor.

9 THE COURT: Do each of you understand that if your  
10 guilty plea is accepted, you will be adjudged guilty of the  
11 offense charged against you and that your punishment will be  
12 assessed somewhere within the range of punishment provided by  
13 statute?

14 Do you understand, Mr. Facio?

15 DEFENDANT FACIO: Yes, Your Honor.

16 THE COURT: Mr. Olafusi?

17 DEFENDANT OLAFUSI: Yes, Your Honor.

18 THE COURT: Are each of you citizens of the United  
19 States?

20 Mr. Facio?

21 DEFENDANT FACIO: Yes, Your Honor.

22 THE COURT: Mr. Olafusi?

23 DEFENDANT OLAFUSI: Yes, Your Honor.

24 THE COURT: As citizens, I inform you that the  
25 commission of a felony offense as you are charged with may

1 deprive you of valuable rights of citizenship, such as the  
2 right to vote, to hold public office, to serve on a jury, to  
3 ever possess any kind of firearm, and other valuable rights?

4 Do each of you understand that consequence?

5 Mr. Facio?

6 DEFENDANT FACIO: Yes, Your Honor.

7 THE COURT: Mr. Olafusi?

8 DEFENDANT OLAFUSI: Yes, Your Honor.

9 THE COURT: I'm going to call upon the United States  
10 Attorney in each of the cases before the Court to now set  
11 forth the essential elements -- excuse me, to set forth the  
12 potential penalties for and consequences of conviction for  
13 which each is pleading.

14 Let's begin with Mr. Facio.

15 MS. SALEEM: As to Mr. Facio, the penalties the Court  
16 can impose as to Count 1 are as follows:

17 A term of imprisonment for not less than ten years and not  
18 more than life. A fine up to the amount of \$250,000, or twice  
19 the pecuniary gain or twice the pecuniary loss per count. A  
20 mandatory special assessment of \$100. Unless the Court finds  
21 the defendant to be indigent, an additional mandatory special  
22 assessment of \$5,000 must also be imposed pursuant to 18, USC,  
23 Section 3014, for offenses occurring on or after May 29, 2015.  
24 A term of supervised release of any term of years or life but  
25 not less than five years, which is mandatory under the law and

1 will follow any term of imprisonment.

2 If the defendant violates any conditions of the term of  
3 supervised release, the Court may revoke such release term and  
4 require the defendant to serve an additional period of  
5 confinement.

6 This last sentence is really not applicable, but, also, in  
7 a revocation of multiple counts, the Court may run sentences  
8 consecutively.

9 Restitution to victims or to the community, which may be  
10 mandatory under the law, and costs of incarceration and  
11 supervision.

12 THE COURT: Mr. Facio, do you understand that if you  
13 plead guilty, you may be subject to those penalties and  
14 consequences just explained?

15 DEFENDANT FACIO: Yes, Your Honor.

16 THE COURT: As to Mr. Olafusi?

17 MR. BRADFORD: May it please the Court.

18 The penalties as to Mr. Olafusi is a fine not to exceed  
19 \$250,000, imprisonment of not more than ten years, or both  
20 such fine and imprisonment, plus, a term of supervised release  
21 of up to three years. If the defendant violates any condition  
22 of supervised release, the Court may revoke such term of  
23 supervised release and require the defendant to serve an  
24 additional period of confinement.

25 In addition, the Court, pursuant to 18, USC, Section

1 3663(a), shall order the defendant to pay restitution to any  
2 victim of his crime, which could include community  
3 restitution. Further, the Court must impose a \$100 mandatory  
4 special assessment.

5 THE COURT: Mr. Olafusi, do you understand that if  
6 you plead guilty, you may be subject to those penalties and  
7 consequences just explained?

8 DEFENDANT OLAFUSI: Yes, Your Honor.

9 THE COURT: Do each of you understand that if the  
10 penalty you receive is more severe than you expect, you  
11 will still be bound by your plea of guilty and you will have  
12 no right to withdraw it?

13 Do you understand, Mr. Facio?

14 DEFENDANT FACIO: Yes, Your Honor.

15 THE COURT: Mr. Olafusi?

16 DEFENDANT OLAFUSI: Yes, Your Honor.

17 THE COURT: There is some language in your plea  
18 agreement, Mr. Facio, that indicates the government will  
19 dismiss any additional charges that might have been brought in  
20 the indictment. Since there is that language, the Court must  
21 decide whether to accept your plea agreement, and if the Court  
22 decides to reject it, you would then have the opportunity to  
23 withdraw your guilty plea and change it to not guilty?

24 Do you understand, sir?

25 DEFENDANT OLAFUSI: Yes, Your Honor.

1 THE COURT: Do either of you have any questions about  
2 anything that we've covered up to this point?

3 Mr. Facio?

4 DEFENDANT FACIO: No, Your Honor.

5 THE COURT: Mr. Olafusi?

6 DEFENDANT OLAFUSI: No, Your Honor.

7 THE COURT: Then having heard all of the foregoing, I  
8 now ask, how do you plead to the one count superseding  
9 information against you, Mr. Facio, guilty or not guilty?

10 DEFENDANT FACIO: Guilty.

11 THE COURT: How do you plead to the one count  
12 indictment against you, Mr. Olafusi, guilty or not guilty?

13 DEFENDANT OLAFUSI: Guilty.

14 THE COURT: To defense counsel, is the guilty plea of  
15 your client consistent with your advice?

16 Mr. Lehmann?

17 MR. LEHMANN: Yes, Your Honor.

18 THE COURT: Mr. King?

19 MR. KING: Yes, Your Honor.

20 THE COURT: Then I'll accept each of the pleas of  
21 guilty on the condition there is a factual basis to support  
22 such pleas.

23 I have a document entitled "Factual Resume" for each case,  
24 and these factual resumes appear to be signed by each  
25 defendant and his counsel.

1 First, is it your signature that appears on your factual  
2 resume?

3 Mr. Facio?

4 DEFENDANT FACIO: Yes, Your Honor.

5 THE COURT: And on yours, Mr. Olafusi?

6 DEFENDANT OLAFUSI: Yes, Your Honor.

7 THE COURT: Have each of you read or had read to you  
8 your factual resume, and do you fully understand this  
9 document?

10 Mr. Facio?

11 DEFENDANT FACIO: Yes, sir.

12 THE COURT: Mr. Olafusi?

13 DEFENDANT OLAFUSI: Yes, Your Honor.

14 THE COURT: Are the facts that are stated in your  
15 factual resume true and correct?

16 Mr. Facio?

17 DEFENDANT FACIO: Yes, Your Honor.

18 THE COURT: To Mr. Olafusi?

19 DEFENDANT OLAFUSI: Yes, Your Honor.

20 THE COURT: To defense counsel, are the facts stated  
21 in your clients' factual resumes consistent with the true  
22 facts as you understand them?

23 Mr. Lehmann?

24 MR. LEHMANN: Yes, Your Honor.

25 THE COURT: Mr. King?



1 MR. KING: Yes, Your Honor.

2 THE COURT: It would be appropriate for the United  
3 States Attorney to now read the stipulated facts that are set  
4 forth in the factual resumes. However, based on the answers I  
5 just received to those questions, I will allow you to waive  
6 the reading of those facts.

7 Do you wish to waive that reading, Mr. Facio?

8 DEFENDANT FACIO: Yes, sir.

9 THE COURT: Mr. Olafusi?

10 DEFENDANT OLAFUSI: Yes, Your Honor.

11 THE COURT: Very well. I'll note that the factual  
12 resumes are on file as Document 21 in each of the cases before  
13 the Court.

14 The Court, being satisfied with the responses given during  
15 this hearing, finds that each defendant is fully competent and  
16 capable of entering an informed plea and that his plea of  
17 guilty to the charge against him is a knowing and voluntary  
18 plea supported by an independent basis in fact containing each  
19 of the essential elements of the offense charged against the  
20 defendant. I, hereby, accept each of your pleas of guilty,  
21 and I pronounce you guilty of the offense with which you are  
22 charged.

23 As I indicated earlier in the proceeding, a presentence  
24 report will be prepared to assist the Court in sentencing.  
25 You will be asked to give information for that report, and

1 your degree of cooperation could be a factor in the severity  
2 of the sentence that you receive. Your attorney is ordered to  
3 be present at your interview having a recent familiarity with  
4 Sentencing Guideline Section 3E1.1, Application Note 1A.

5 The Court -- excuse me. You and your counsel will be  
6 provided a copy of that report well in advance of the date of  
7 your sentencing, and you will have an opportunity to make any  
8 comments on it or any objections to it.

9 Because I have conducted this hearing rather than the  
10 district judge, I'm making a written report to the district  
11 judge telling him what you have said and done here today and  
12 what I have found. I also tell you that if you or your  
13 attorney have any objections to anything I have said or done  
14 or to the report itself, those objections must be filed within  
15 14 days from the date of this hearing.

16 My clerk will deliver the presentence referral form to the  
17 probation office. A copy of that form has been provided to  
18 each defense counsel, and I remind counsel it is your  
19 responsibility to contact the probation office as soon as  
20 practicable for further instruction regarding the presentence  
21 investigation.

22 These matters are each scheduled to be sentenced on  
23 August 14, 2017 at 9 o'clock a.m. before the Honorable Judge  
24 Reed O'Connor to take place here in this courtroom.

25 At this time I remand Mr. Facio to the custody of the

1 United States Marshal. Good luck to you, sir.

2 And, Mr. Lehmann, you are excused.

3 (End of proceedings, 10:20 a.m.)

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20 CERTIFICATE

21 I certify that the foregoing is a correct transcript from  
22 the record of proceedings in the above-entitled matter, and  
23 that the transcript was prepared by me and under my  
supervision.

24 s/ Ana P. Warren  
Ana P. Warren, CSR #2302  
25 U.S. District Court Reporter

October 27, 2017  
Date